

[2019] NZSSAA 33

Reference No. SSAA 150/18

**IN THE MATTER** of the Social Security Act 2018

**AND**

**IN THE MATTER** of an appeal by **XXXX** of  
Auckland against a decision of  
a Benefits Review Committee

## **BEFORE THE SOCIAL SECURITY APPEAL AUTHORITY**

**S Pezaro** - Deputy Chair

**K Williams** - Member

**C Joe** - Member

**Hearing** at Auckland on 1 May 2019

### **Appearances**

The appellant in person with his agent, his mother

N Jaura for the Ministry of Social Development

## **DECISION**

### **Background**

[1] XXXX, the appellant, is 50 years old. He has Downs Syndrome and lives with his mother (the agent) in her home. She cares for him and acts as his agent in this appeal.

[2] The appeal was filed on 15 November 2018. The outcome sought from the Authority was “to restore XXXX’s rights along with damages for emotional harm along with his carer’s rights of 24/7 for 50 years”. The agent stated that the appeal was against a decision of a Benefits Review Committee (BRC) and a decision of the Chief Executive on 2 December 2004. No date was given for the decision of the BRC although the agent attached a BRC decision dated 27 June 2018. The BRC had reviewed the Ministry’s decision on 18 March 2017 to regrant the

applicant's Disability Allowance at the maximum rate and Special Benefit at \$26.50 per week from 6 March 2017.

- [3] On 24 January 2019, the Authority convened a telephone conference to clarify which decision was being appealed, the grounds for the appeal and set a timetable for hearing. The agent confirmed that she was seeking a review of the amounts paid to the appellant as a Disability Allowance, Special Benefit and his Accommodation Supplement (the supplementary payments). As recorded in the direction issued after that conference, the agent was told that the Authority cannot award damages or compensation for discrimination.
- [4] A timetable was set for the Ministry to file its report and for the appellant to file further documents before the hearing. When the Ministry filed its report, it stated that it had reviewed its decisions on the supplementary payments and:
- [4.1] Increased the appellant's Accommodation Supplement or board from \$350 to \$400 per week for the period from 25 January 2016 to 31 March 2019 and paid the appellant arrears of \$3,583.13 for this period.
- [4.2] Correctly paid Disability Allowance at the maximum rate of \$63.22 for the period from 1 April 2018 to 31 March 2019 and paid arrears of \$44.32 for this period.
- [4.3] Recalculated Special Benefit on the increased award costs and included disability related costs of \$164.33 from 25 January 2016 to 31 March 2019 and paid arrears of \$16,093.54 for this period.
- [5] The agent was directed to confirm by 23 April 2019 whether the Ministry's review had resolved the appeal. If it had not, the agent was directed to provide a written statement setting out the reasons for any disagreement with the conclusions that the Ministry had reached in its report and the issues that she wanted the Authority to consider at the hearing, with any further evidence she intended to refer to at the hearing.
- [6] The agent wrote a covering letter which indicated that she was not satisfied with the decision that the Ministry had reached. Although the agent did not clearly identify the unresolved issues, it appeared that the main issue was whether the supplementary assistance provided to the appellant represented adequate payment for the care provided by the agent. She attached approximately 200

pages of documents including correspondence with various organisations and receipts for items purchased for the appellant.

- [7] At the hearing, the agent argued that a Special Benefit is not limited to a maximum payment, that WINZ breached the Illegal Contracts Act 1970<sup>1</sup> and that the appellant's Accommodation Supplement and Special Benefit payment left a shortfall when assessed against the actual cost of his care.
- [8] The agent said that the main issue she wanted the Authority to consider was whether the appellant should receive \$1,400 per week for board. She accepted that the Authority does not have jurisdiction to award interest on the arrears that have been paid by the Ministry, or to award damages to the appellant.
- [9] The parties agreed that the Ministry's request in its report for the appellant's costs for the period from 1 May 2019 to 1 May 2020 in relation to Disability Allowance and Special Benefit was not a matter over which the Authority has jurisdiction, because it is a decision on future entitlement and the Ministry has not made a decision on this issue, nor has it been the subject of a review by a BRC.

#### **The case for the appellant**

- [10] The agent states that she is paid for 26.5 hours per week by the Ministry of Health for caring for the appellant. On the basis that she needs to provide 24-hour care, seven days a week, she calculates that this leaves a balance of 141.5 hours a week which is unpaid.
- [11] She considers that she is entitled to be paid for 112 hours per week, at \$20 per hour, in addition to the hours paid by the Ministry of Health, a total of \$2,240 per week. On this basis, the agent argued that her request for board of \$1,400 per week is more than fair. She said she needs the board money to repair her home and carry out maintenance such as replacing a broken washing machine and old washing tub.
- [12] The agent argued that to equate the cost of care for the appellant with the accommodation costs of a normal boarder is unrealistic because a normal boarder does not require full time care.

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<sup>1</sup> Repealed by the Contract and Commercial Law Act 2017.

- [13] The agent argued that the appellant was being discriminated against compared with someone in residential care who had their costs covered.
- [14] The agent received Supported Living Payment (SLP) as a carer for her son until she became eligible for New Zealand Superannuation. At this point, the SLP assistance was stopped on the basis that s 72 of the Social Security Act 1964 (the Act) prohibits receipt of two main benefits.

### **The case for the Ministry**

- [15] Ms Jaura said that there is no provision in the Act for the Ministry to pay somebody else in the manner that the appellant's agent claims. The Ministry has no ability to consider hourly rates of pay for providing care in the manner claimed by the agent. However, as recorded, the Ministry reviewed its decision in relation to the cost of board on which Accommodation Supplement is based, and the rate of Disability Allowance and Special Benefit.
- [16] Section 61E of the Act defines accommodation costs for a beneficiary paying board as 62 per cent of the total board cost, the balance being for repairs and maintenance, rates, insurance and other costs of home ownership. Prior to the Ministry's review, the appellant's accommodation supplement was based on board of \$350 per week as the cost of board in the area in which the appellant resides is between \$150 and \$350 per week. However, as this amount had not changed for some time, the Ministry reassessed his entitlement to Accommodation Supplement based on board of \$400 per week. At this rate, the accommodation component of the appellant's board cost is \$248 per week. Applying the relevant formula, he is now entitled to an Accommodation Supplement of \$127 per week.
- [17] In relation to Special Benefit, the Ministry says that the appellant has been receiving Special Benefit since 2011. While there is no maximum for Special Benefit, it is intended as temporary assistance to be provided when costs are not met in any other way. Ms Jaura said that since 2011 the agent has provided limited verification of costs related to Disability Allowance and Special Benefit, despite the Ministry's requests for updated evidence of the additional costs she claimed.
- [18] The agent did provide further information before this hearing, but Ms Jaura said that the more recent records show that the appellant's expenditure has reduced since 2015.

[19] However, when the Ministry reconsidered the supplementary payments for Disability Allowance and Special Benefit prior to preparing its report, it decided to base its calculations on the 2015 records which is to the appellant's advantage. Ms Jaura said that the appellant's entitlement to supplementary assistance will be reassessed in 2020 and, at that time, the appellant's agent will need to provide records of expenses incurred for the 2019-2020 year.

### **Relevant law**

[20] It is not necessary to set out the relevant provisions of the Act as the agent did not challenge the Ministry's application of the Act in relation to the supplementary payments. Nor did she dispute the Ministry's assertion that the 2015 records show that the appellant's costs were higher in that year than in subsequent years, therefore he is currently receiving more than his entitlement.

[21] The agent's assertion that the appellant has a contract with the Ministry which the Ministry has breached is not correct. The appellant's entitlement is determined in accordance with the criteria in the Act and regulations, not by any contractual obligation on the part of the Ministry.

[22] The question of discrimination raised by the agent, and whether the Act is consistent with the Human Rights Act 1993, are not matters that the Authority can determine and compensate. Relevant discrimination could only affect statutory interpretation and the way we exercise discretions. No such issues arise within the scope of this appeal, we necessarily find the relevant legislation is in material respects unambiguous, being founded on policy choices that we have no jurisdiction to review.

### **Discussion**

[23] This is the second appeal the appellant has brought, through his agent, on the question of payment for his care. In 2011, the agent also claimed the cost of board at \$1,400 per week. The Authority dismissed that appeal and noted that the Accommodation Supplement is not intended to cover the cost of any goods and services provided with the accommodation.<sup>2</sup>

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<sup>2</sup> [2012] NZSAA 45.

- [24] On the evidence before us we are satisfied that, as a result of the Ministry's revision of the decision under appeal, the appellant is receiving the maximum supplementary assistance to which he is entitled.
- [25] The only provision in the Act for payment to a person caring for another person is the SLP. This benefit can be paid to a person who provides care to someone who would otherwise require residential care. SLP is paid at a rate set by the Act. It is not calculated on an hourly basis or related to standard rates of pay for similar work. There is no provision in the Act for any other form of payment to a caregiver.
- [26] The Authority has no jurisdiction to order the Ministry to pay or compensate the appellant's agent for her time or cost in caring for her son. As the Authority noted in 2012, there is no jurisdiction under the Act for payment for goods or services associated with board and the argument that such a payment can be made in the form of Accommodation Supplement or some other form of assistance by the Ministry is inconsistent with the Act. For these reasons, this appeal cannot succeed.

**Order**

- [27] The appeal is dismissed.

**Dated at Wellington** this 16th day of May 2019

**S Pezaro**  
Deputy Chair

**K Williams**  
Member

**C Joe**  
Member